



Transportation Utility Fees

& Related Litigation

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Transportation Interim Committee

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- **What Is a Transportation Utility Fee?**
- **Transportation Utility Fee under Utah Law**
- **Municipal Authority**
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What Is a Transportation Utility Fee?

- **A transportation utility fee (“TUF”) is a financing mechanism that treats the transportation system like a utility**
- **Residents and businesses pay fees based on their estimated use of the system**
- **The estimated use is usually based on the projected intensity of use, number of parking spaces, typical number of trips, etc.**

Source: Federal Highway Administration, https://www.fhwa.dot.gov/ipd/value_capture/defined/transportation_utility_fees.aspx



What is a Transportation Utility Fee?

- **This links the costs of maintaining transportation infrastructure with the benefits gained in mobility**
- **Unlike property taxes, a TUF is levied on all property occupants not just property owners**
- **Local governments primarily use TUFs to fund local road maintenance**

Source: Federal Highway Administration, https://www.fhwa.dot.gov/ipd/value_capture/defined/transportation_utility_fees.aspx



TUF under Utah Law

- **A TUF is defined by Utah Code section 11-26-301 as “an ongoing, regular fee ~~or tax~~ imposed by a municipality for the purpose of maintaining public roads . . . on utility customers within the municipality.”**
- **2020 SB 169 amended this section to remove the “or tax” language to clarify the definition**



Municipal Authority

- **In general, Utah cities are given broad authority under section 10-8-84 to pass ordinances which are appropriately and reasonably related to providing for the public safety, health, welfare, and morals of their residents. See *Salt Lake City v. Allred*, 437 P.2d 434 (Utah 1968)**
- **Although a municipality has the authority to impose a TUF, the imposition of a TUF may raise the issue as to whether the TUF is a fee or a tax**



Is It a Fee or a Tax?

- **The Utah Supreme Court established the test to distinguish a fee from a tax in the key case, *V-1 Oil Co. v. Utah State Tax Comm'n*, 942 P.2d 906 (Utah 1996)**
- **The classification of an exaction depends on its purpose**
- **In general, the objective of a tax is to raise revenue for general governmental purposes**
- **In contrast, a fee is charged for providing a service or to cover the cost of regulation of a business or industry**



Is It a Fee or a Tax?

- **Service Fee**

- A municipality may impose a fee for providing a service if the amount charged bears a reasonable relationship to the services provided, the benefits received, or a need created by those who must actually pay the fee

- **Regulatory Fee**

- A municipality may impose a fee to defray the cost of regulating a business, industry, or activity
- Similar to a service fee, a regulatory fee must bear a reasonable relationship to the cost of regulation

- **What Is Reasonable?**

- The total cost of the financed service “must fall equitably upon those who are similarly situated and in a just proportion to the benefits conferred.”
- This reasonable relationship requirement is “intended to prevent a fee from being used to generate excessive revenues and becoming indistinguishable from a tax.”



Related Litigation

- **Currently, there is pending litigation challenging a local government's use of TUFs as a method of financing road maintenance projects**
- **In *Larson v. Pleasant Grove City*, the Utah Fourth District Court considered plaintiff businesses' challenge to Pleasant Grove City's authority to impose a TUF and whether the fee was a disguised tax that should be subject to public processes before implementation**

Related Litigation

- **Trial Court Decision in *Larson v. Pleasant Grove City***
 - Earlier this year, the trial court determined that the City had the authority to impose the TUF, but it found that the TUF, as implemented, was a tax
 - Although the fee collected by the City is put into a restricted fund and is only to be used to maintain local roads, the court found that the TUF was a tax because “the benefit of an improved road systems is a general benefit rather than a specific benefit to those who pay the fees.”

IN THE FOURTH DISTRICT COURT - SPANISH FORK, UTAH COUNTY, STATE OF UTAH	
UTAH SAGE, INC. a Utah corporation dba HOBBY TRACTORS & EQUIPMENT, LARKIN TIRES, INC. a Utah corporation, GARY LARSON, an individual, FRATERNAL ORDER OF EAGLES #3372, a non-profit organization, Plaintiffs, vs. PLEASANT GROVE CITY, Defendant.	<div>FILED FEB 18 2020 4TH DISTRICT STATE OF UTAH UTAH COUNTY</div> RULING ON COMPETING MOTIONS FOR SUMMARY JUDGMENT Case No. 190300164 JUDGE JARED ELDRIDGE
<p>This case comes before the court on Competing Motions for Summary Judgment filed by both Plaintiffs and Defendant. There are no material issues of fact. Both parties agree the only questions remaining are legal and as such this matter can be resolved one way or the other by the Court determining the applicable law and applying it to the undisputed facts.</p> <p>I. SUMMARY</p> <p>In recent years, like many cities and counties in the State of Utah, Pleasant Grove City found itself facing a budget shortfall making it almost impossible for the City to maintain roads at an acceptable level unless additional funding was found. As a result, the City projected an increasing number of roads would deteriorate to an unacceptable level unless funding could be increased to cover additional maintenance expenses.</p> <p>Pleasant Grove and other cities and counties brought their plight to the attention of the Utah State Legislature, hoping for some adjustment in the State gas tax that would help alleviate the</p>	



Related Litigation

- **The City has appealed the court's decision, and the case is now pending in the Utah Court of Appeals**
- **The effect of this ruling:**
 - **if the trial court decision is upheld, municipalities that intend to impose a TUF in this manner must go through the public processes required by Utah code for imposing a tax**